

HOUSE BILL 126

By Brooks H

AN ACT to amend Tennessee Code Annotated, Title 49,
Chapter 1, relative to opportunity scholarships.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 49, Chapter 1, is amended by adding the following language as a new part:

49-1-1201.

This part shall be known and may be cited as the "Opportunity Scholarship Pilot Program."

49-1-1202.

(a) The department of education shall establish a pilot program that awards scholarships to eligible students pursuant to this part in all LEAs identified on a list approved by the state board of education as having at least thirty (30) schools in the bottom five percent (5%) of schools in overall achievement as determined by the performance standards and other criteria set by the state board.

(b) The pilot program shall be monitored and evaluated by the office of research and education accountability (OREA) in the office of the comptroller of the treasury, which shall report annually in writing to the general assembly by December 31, following a school year in which scholarships are awarded. The comptroller and the department shall post the report on their websites.

49-1-1203.

As used in this part, unless the context otherwise requires:

- (1) "Department" means the department of education;
- (2) "Eligible student" means a student who:

(A) Resides in an LEA in which the pilot program is established according to § 49-1-1202;

(B) Meets the minimum age requirements specified in § 49-6-3001, with eligibility extending until the student graduates from high school; however, the student must be less than twenty-two (22) years of age by August 15 of each year;

(C) Is a member of a household whose annual income during the year prior to the request for participation in the program met the requirements for free or reduced price lunch under 42 U.S.C. § 1751 et seq.; and

(D) Meets at least one (1) of the following requirements:

(i) Was previously enrolled in a Tennessee public school during the two (2) semesters immediately preceding the semester in which the student receives an opportunity scholarship for the first time;

(ii) Is attending a Tennessee school for the first time; or

(iii) Received a scholarship pursuant to this part in the previous school year;

(3) "Parent" means the parent, legal guardian, person who has custody of the child, or person with caregiving authority for the child under § 49-6-3001;

(4) "Participating school" means a nonpublic school that meets the requirements established in this part and seeks to enroll eligible students;

(5) "Program" means the opportunity scholarship program created by this part;

(6) "Scholarship" means the funds awarded to a parent on behalf of an eligible student pursuant to this part;

(7) "Scholarship student" means an eligible student who is awarded a scholarship pursuant to this part;

(8) "State board" means the state board of education; and

(9) "Tuition and fees" means the cost of educating an enrolled student, inclusive of any cost required as a condition of attending the participating school or using its equipment or facilities while participating in or receiving educational training. "Tuition and fees" includes operational and facility costs, transportation costs, meal costs, and any additional costs associated with participating in the program or educating the student.

49-1-1204.

(a) A participating school shall:

(1) Voluntarily agree to participate in the program and enroll eligible students pursuant to this part;

(2) Provide notice, on an annual basis, of intent to participate in the program to the department through completion of an application developed by the department. Such notice shall include the number of available seats by grade level;

(3) Be identified as a category I, II, or III school pursuant to department procedures and state board rules and comply with all health and safety laws or codes that are applicable to such schools;

(4) Annually administer to scholarship students state assessments as provided in part 6 of this chapter or nationally recognized norm-referenced tests, approved by the state board, that measure educational progress represented by a value-added assessment system developed pursuant to part 6 of this chapter;

(5) Provide the parents of scholarship students the results of their individual student's annual assessments;

(6) In addition to the information derived from the requirements of subdivision (a)(4), provide the department with graduation rates of scholarship students as well as other student information allowing for the aggregation of data as determined and required by the department;

(7) Comply with nondiscrimination policies pursuant to 42 U.S.C. § 1981 and otherwise abide by the school's written admission policy with regard to students who are awarded scholarships under this part. If a scholarship student is not successfully enrolled in a school, the student shall remain eligible to enroll in another participating school;

(8) Not discriminate against students with special education needs who meet the requirements for admission to the school during the enrollment admissions process; however, as a nonpublic school, a participating school is required to offer only those services it already provides to assist students with special needs. If a scholarship student would have been entitled to receive special education services in the public school the student would otherwise be attending, the parent shall acknowledge in writing, as part of the enrollment admissions process, that the parent agrees to accept only services available to the student in the nonpublic school. A participating school may partner with the LEA in the program to provide special education services;

(9) Accept the scholarship amount as payment in full for the cost of tuition and fees that would otherwise be charged by the school;

(10) Allow scholarship students to remain enrolled in the school for the duration of the school year at no additional cost if the school withdraws from the program during the school year;

(11) Submit to the department a financial audit of the school conducted by a certified public accountant; however, the audit may be limited in scope to records necessary for the department to make scholarship payments to the school. The audit shall include a statement that the report is free of material misstatements and fairly represents the participating school's maximum total tuition and fees. Any funds determined by the department to be expended in a manner inconsistent with this part shall be returned to the state;

(12) Demonstrate financial viability to repay any funds that may be owed to the state by filing with the department, prior to the start of the school year, financial information verifying the school has the ability to pay an aggregate amount equal to the amount of the scholarships expected to be paid during the school year. The school may comply with this requirement by filing a bond payable to the state from a surety, and in an amount determined by the department;

(13) Require any person applying for a position as a teacher or any other position requiring close proximity to children to submit to a criminal background check; and

(14) Comply with § 49-5-202.

(b) Participation in the program by a school is voluntary and nothing in this part authorizes any additional regulation of participating schools beyond that specifically authorized by this part. A school participating in the program is not considered a state

actor, or agent of the state or federal government, by virtue of its participation in this program.

(c) The amount of a scholarship awarded to a scholarship student shall not be treated as income or an asset for the purposes of any tax or qualification for any other federal or state grant or program.

49-1-1205.

(a) The department shall develop procedures necessary for administering the program. In administering the program, the department shall:

(1) Provide notice to parents of student eligibility and participating schools;

(2) Accept applications from parents of eligible students and award scholarships to eligible students. Each application shall indicate the parent's choice or choices of participating schools;

(3) Determine and approve school and student eligibility and participation pursuant to the requirements of this part. If the number of eligible students who submit applications exceeds the permissible number of scholarships available in the program or the available seats at participating schools for any grade level, the department must conduct a random selection process to award scholarships that provides each eligible student with an equal opportunity for selection. The department shall give preference to students participating in the program who are already enrolled in the participating school and to siblings of such students;

(4) Create a standard application that parents and students interested in the program shall submit to establish eligibility and apply for admission to participating schools; however, nothing prohibits or excludes participating

schools from requiring supplemental information from applicants or implementing the school's standard admissions policy;

(5) Establish application and participation timelines that will maximize student and school participation;

(6) Remit scholarship payments to participating schools on behalf of scholarship recipients; however, any scholarship awarded under this part shall be the entitlement of the eligible student under the supervision of the student's parent and shall not be the entitlement of any participating school; and

(7) Annually publish, in compliance with all state and federal student privacy laws, student achievement and progress information for scholarship recipients for each participating school, which shall include:

(A) Achievement results in the aggregate, including educational progress;

(B) The graduation rate, as applicable; and

(C) The retention rate.

(b) The department may suspend or terminate a school's participation in the program if the department determines the school has failed to comply with this part. If the department suspends or terminates the school's participation, the department shall notify affected scholarship students and their parents of the decision. If a participating school is suspended or terminated from the program, or if the school otherwise withdraws from the program, scholarship students enrolled at the school may transfer to another participating school without loss of scholarship eligibility, and the students shall be given preference for enrollment.

(c) Except as provided in subsection (b), an eligible student is entitled to one (1) scholarship per school year; provided, that the award of the scholarship does not exceed

the limitation on the number of scholarships that may be awarded under § 49-1-1208(a). If the student voluntarily leaves a participating school for reasons other than suspension or termination of the school's participation in the program by the department, and enrolls in another participating school, neither the student nor the successor participating school shall receive any funds under this part for the payment of tuition and fees for the remainder of the school year. However, if the student enrolls in the LEA in which the program is operated, the LEA must receive the funds that otherwise would have been remitted to a participating school on behalf of the scholarship student.

(d) In compliance with all state and federal student privacy laws, the LEA, in a timely manner, shall provide a participating school that has admitted an eligible student under this part with a complete copy of the student's school records in the possession of the LEA.

(e) The names or any other information that alone, or in combination, could personally identify specific scholarship recipients shall be treated as confidential and shall not be open to the public. Nothing in this part prevents the department, state board, or participating schools from accessing and utilizing such records as required to fulfill their lawful functions.

49-1-1206.

(a) After initial approval by the department as a participating school, a school may continue to enroll additional eligible students throughout the program; provided, the school demonstrates achievement growth for scholarship students, in the aggregate, at a minimum level of "at expectations," as represented by a value-added assessment system developed pursuant to part 6 of this chapter or through guidelines adopted by the state board pursuant to part 3 of this chapter.

(b) If a participating school demonstrates achievement growth for scholarship students, in the aggregate, at a level of "significantly below expectations" for two (2) consecutive years, as represented by a value-added assessment system developed pursuant to part 6 of this chapter or through guidelines adopted by the state board pursuant to part 3 of this chapter, the commissioner has the authority to suspend or terminate the school's participation in the program. If the department suspends or terminates the school's participation, the department shall notify affected scholarship students and their parents of the decision. If a participating school is suspended or terminated from the program pursuant to this subsection (b), scholarship students enrolled at the school may transfer to another participating school without loss of eligibility, and the students shall be given preference for enrollment.

49-1-1207.

(a) Notwithstanding subsection (e), the annual amount to which an eligible student is entitled under this part shall be equal to the lesser of the following:

(1) The cost of tuition and fees that would otherwise be charged by the school; or

(2) The amount representing the per pupil state and local funds generated and required through the basic education program (BEP) for the LEA in which the program is operated.

(b) For the purposes of funding calculations, all scholarship recipients shall be counted in the enrollment figures for the LEA in which the program is operated. The scholarship funds shall be subtracted from the total state funds otherwise payable to the LEA and shall be paid directly to the participating school.

(c) If the participating school's cost of tuition and fees is less than the amount outlined in subdivision (a)(2), the remaining funds shall be retained by the department

and the LEA in which the program is operated, with specific amounts based on the LEA's state and local funding share under the BEP.

(d) The department shall develop a schedule for payments of scholarship funds to participating schools. If a participating student is enrolled in a participating school for less than the entire school year, the scholarship provided under this part shall be reduced on a prorated basis to reflect the shorter school term.

(e) If the federal government makes funds available for use by states for scholarship purposes, the department shall apply for and use, in accordance with federal laws and regulations, any funds distributed for scholarship purposes by the federal government to the state and shall establish a separate and independent program to distribute those funds; provided, that, participation by participating schools in any federally funded program is voluntary and otherwise meets the requirements of this act.

49-1-1208.

(a) The total number of scholarships awarded by the program shall be limited as follows:

(1) For the 2017-2018 school year, the department shall award no more than five thousand (5,000) scholarships;

(2) For the 2018-2019 school year, the department shall award no more than ten thousand (10,000) scholarships;

(3) For the 2019-2020 school year, the department shall award no more than fifteen thousand (15,000) scholarships; and

(4) For the 2020-2021 school year and annually thereafter, the department shall award no more than twenty thousand (20,000) scholarships.

(b) The department shall develop procedures to allocate scholarships among participating schools if the number of available seats exceeds the limitations set forth in subsection (a).

49-1-1209.

To address circumstances in which the number of eligible students applying for scholarships at a particular participating school in a particular grade exceeds the number of scholarships awarded, the department shall inform parents of eligible students of all available scholarship options and provide an opportunity for parents to apply to other participating schools.

49-1-1210.

The state board is authorized to promulgate rules to effectuate the purposes of this part.

SECTION 2. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to that end the provisions of this act are severable.

SECTION 3. If any part of this act is challenged in a Tennessee court as violating either the state or federal constitutions, parents or participating students shall be permitted to intervene in the lawsuit for the purposes of defending the act's constitutionality. However, for the purposes of judicial administration, a court may limit the number of parents permitted to intervene or require that all parents file a joint brief, so long as they are not required to join any brief filed on behalf of any named state defendant.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it, and shall begin in the 2017-2018 school year.